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OFFICE OF PETITIONS

In re Application of  
McKissick et al.  
Application No. 09/378,533  
Filed: August 20, 1999  
Attorney Docket Number: UV-98

DECISION ON PETITION

This is a decision on the petition, filed May 29, 2009 which is being treated as a petition under 37 CFR 1.181, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Notice of Panel Decision from Pre-Appeal Brief Review ("Notice") of December 8, 2008, which set a one (1) month shortened statutory period for reply.

Petitioner contends this application was prematurely abandoned because the Notice provided applicant with an extendable time period to submit a reply. A reply in the form of an RCE and amendment were submitted in conjunction with the instant petition.

The Notice provided states the time period for filing an appeal brief will be the later of the two month period set in 37 CFR 41.37(a) or one month from mailing of the decision on the Pre-Appeal Brief Request For Review, whichever is greater. Further, the time period for filing of the appeal brief is extendable under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. As such petitioner was able to purchase an additional five months. As such, the reply submitted on May 29, 2009 is timely.

Accordingly, the holding of abandonment for failure to timely file a reply to the Notice of Panel Decision from Pre-Appeal Brief Review of December 8, 2008 is hereby withdrawn and the application restored to pending status.

This application is being referred to art unit 2424 for appropriate action on the RCE and amendment in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

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